STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED June 17, 2014
v	No. 315349 Wayne Circuit Court
SAMEER ABDULLA, Defendant-Appellee.	LC No. 12-009499-FH

Before: O'CONNELL, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

The people appeals as of right a trial court order granting defendant's motion to suppress evidence and dismissing charges against defendant for delivery of marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. We reverse and remand for further proceedings.

The prosecution argues that the court erred when it granted defendant's motion to suppress evidence obtained following an investigatory stop of defendant by Jonathon Strong, a police officer in Redford Township, Michigan. Specifically, the prosecution argues that the stop was supported by reasonable suspicion that defendant was engaging in drug-related criminal activity. The prosecution contends that Strong's observation of a person reaching into defendant's car, in an area known for drug activity, supported reasonable suspicion of criminal wrongdoing. We agree.

We review a lower court's findings of fact in a suppression hearing for clear error, but the ultimate decision on a motion to suppress evidence is reviewed de novo. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). Therefore, the lower court's factual findings at the pretrial evidentiary hearing must be reviewed for clear error, and its ultimate decision to grant defendant's motion to suppress evidence must be reviewed de novo.

The Fourth Amendment of the United States Constitution and the related provision of the Michigan Constitution explicitly protect the right of the people to be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. It is well settled that unless a specifically established exception applies, searches and seizures conducted without a warrant are unreasonable per se. *Katz v United States*, 389 US 347, 357; 88 S Ct 507; 19 L Ed 2d 576 (1967). One exception to the general prohibition against warrantless searches and seizures is the so called "*Terry* stop." *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). Under

Terry, "if a police officer has a reasonable, articulable suspicion to believe a person has committed or is committing a crime given the totality of the circumstances, the officer may briefly stop that person for further investigation." *People v Barbarich*, 291 Mich App 468, 473; 807 NW2d 56 (2011). A reasonable suspicion is less than the level of suspicion needed for probable cause; it requires just something more than an inchoate or unparticularized suspicion. *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). Even if probable cause does not exist to arrest a person, a police officer may still approach and temporarily detain a person to investigate possible criminal behavior. *Id.*

An investigatory stop of a motor vehicle may be based upon "fewer facts than those necessary to support a finding of reasonableness where both a stop and a search are conducted by the police." *People v Yeoman*, 218 Mich App 406, 411; 554 NW2d 577 (1996). In determining whether reasonable suspicion existed, this Court should be guided by the principle that "common sense and everyday life experiences predominate over uncompromising standards." *People v Nelson*, 443 Mich 626, 635-636; 505 NW2d 266 (1993). Deference should be given to the common-sense assessment of police officers that criminal activity is afoot, in consideration of the "police officer's experience and the known patterns of certain types of lawbreakers." *People v Rizzo*, 243 Mich App 151, 156; 622 NW2d 319 (2000). However, "an officer testifying that he inferred on the basis of his experience and training is obliged to articulate how the behavior that he observed suggested, in light of his experience and training, an inference of criminal activity." *People v LoCicero (After Remand)*, 453 Mich 496, 505-506; 556 NW2d 498 (1996). If an investigative stop of a motor vehicle is proper, the police officer may detain the vehicle briefly to "make reasonable inquiries aimed at confirming or dispelling his suspicions." *Yeoman*, 218 Mich App at 411.

First, the lower court's findings of fact were not clearly erroneous. Strong was the only witness to testify at the evidentiary hearing, and the lower court's factual findings were consistent with his testimony. Specifically, the lower court found that Strong suspected a drug deal occurred when he observed the pickup truck driver reaching into defendant's window in a "high drug narcotics activity area," where Strong had arrested people in connection with drug deals many times in the past. Although the prosecution argues that defendant attempted to flee the scene after Strong ordered the vehicles to stop, the court did not make any factual findings to that effect. Rather, the court stated that defendant's vehicle was already moving when Strong pulled into the shopping center parking lot, and he stopped when Strong ordered him to do so. Defendant does not argue on appeal that any of Strong's testimony was incredible, nor does he argue that the court's factual findings were clearly erroneous. Accordingly, based on the factual findings of the lower court, the officer's reasonable suspicion would be based on two considerations: the parking lot's reputation for high levels of drug activity, and the pickup truck driver reaching into defendant's window.

The prosecution argues that *Illinois v Wardlow*, 528 US 119; 120 S Ct 673; 145 L Ed 2d 570 (2000), is factually similar to this case, and that it should provide guidance to this Court's decision. In *Wardlow*, as police officers were patrolling an area known for heavy narcotics trafficking, the defendant fled on foot when he saw their police cruiser. *Wardlow*, 528 US at 121-122. Officers pursued the defendant, cornered him, and discovered a handgun in his possession when they conducted a protective patdown search. *Id.* at 122. The United States Supreme Court concluded that the defendant's unprovoked flight from officers, coupled with the

setting of a heavy drug trafficking area, supported the officers' reasonable suspicion that defendant was engaging in or about to engage in criminal activity. *Id*. at 124-125. However, the Court also stated that "an individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime." *Id*. at 124. For the purposes of this case, *Wardlow* stands for the proposition that defendant's presence in a high crime area was insufficient, on its own, to support a conclusion of reasonable suspicion. However, the factual similarity of *Wardlow* ends there; defendant did not flee Strong in this case. The pickup truck driver reaching into defendant's car was significantly less suggestive of criminal activity than the defendant's unprovoked flight in *Wardlow*, especially considering that Strong did not actually see any items exchanged, the encounter occurred in the middle of the day, and it happened in front of a business open to the public.

The lower court found our Supreme Court's decision in *LoCicero* factually similar in his ruling on defendant's motion to suppress, and defendant argues on appeal that it is persuasive here. In *LoCicero*, two vehicles, one driven by the defendant, looped around a parking lot, briefly met, then drove in a caravan two miles away to another parking lot, where defendant left his vehicle, went inside the other vehicle, and ultimately returned to his vehicle before driving off. *LoCicero*, 453 Mich at 498-499. Undercover police officers observed these activities occur; however, neither parking lot was known as a high drug activity area. *Id*. The Court concluded that there were insufficient facts for a conclusion of reasonable suspicion because "the bald assertion by an officer that the situation looked like a drug transaction may be occurring" was insufficient to support reasonable suspicion. *Id*. at 506. In a statement relevant for the facts of this case, the Court noted that "On this record, we do not find that an objective level of suspicion attaches to the defendants driving into a parking lot of an open business at a reasonable hour of the evening." *Id*. at 507. The actual conduct observed by the officers in *LoCicero* was similar to the conduct here: an apparent exchange, though officers did not actually see items change hands. *Id*. at 499-500. However, the conduct in *LoCicero* did not occur in an area known for drug trafficking. Strong had a stronger basis for reasonable suspicion than the officers in *LoCicero*, based on defendant's apparent exchange taking place in a parking lot where Strong had made many drug arrests in the past.

Additionally, in *LoCicero* the officer did not explain how his previous training and experience led him to the conclusion that the activities he witnessed look like a drug transaction. In this case, Strong's previous training and experience led to his reasonable suspicion that defendant was engaging in criminal activity. Strong had made many arrests following similar conduct in that particular parking lot. Giving deference to Strong's "experience and the known patterns of certain types of lawbreakers," defendant's conduct gave rise to more than an unparticularized suspicion that criminal activity was afoot. Instead, an apparent exchange in a parking lot known for drug deals was sufficient for Strong, in his experience as a police officer in Redford Township, to make an investigatory stop. The trial court erred by granting defendant's motion to suppress the evidence and dismiss the charges.

We reverse the trial court's order granting defendant's motion to suppress evidence and dismissing the charges against defendant and we remand for further proceedings. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey